MALINS, V.-C., held that though the working of the mine by the railway company was unauthorized and *ultra vires*, which would possibly have been a defence available to the defendants, who were their successors in title, the Act of Parliament which gave the company power to sell their collieries was impliedly a recognition of the fact that they were then working the collieries, and an implied authority for them to continue to do so until the time the sale took place. As for the release, the plaintiffs executing it had no knowledge of, or reason for suspecting, the trespass by the railway company, therefore the release did not apply to the present cause of action.

The Statute of Limitations in this case was not a bar. The rule upon the statute in courts of equity was that where there was no fraud, the statute was binding in a court of equity, as in a court of law. But wherever a title existed at law and in conscience, and the effectual assertion of it at law was unconscientiously obstructed, relief would be given in equity. Equity would remove the bar proceeding from lapse of time, as it would from any other legal advantage, if sought to be used unconscientiously. In equity the statute did not therefore begin to run until the fraud had been discovered or might have been discovered. For the purposes of the statute the trespass in this case was a fraudulent act, and as there had been no means of discovery until 1870, the bill had been filed in time. Decree for an account.

ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]
ENGLISH COURTS OF LAW AND EQUITY.[2]
SUPREME JUDICIAL COURT OF MAINE.[3]
SUPREME COURT OF MICHIGAN.[4]

ADMIRALTY.

Liability of Steam-tug for Negligence.—A steam-tug is not a common carrier or insurer. The highest possible degree of skill and care are not required of her. She is bound, however, to bring to the perform-

[1] Prepared expressly for the American Law Register, from the original opinions filed during Oct. Term 1876. The cases will probably be reported in 4 or 5 Otto.

[2] Selected from the last numbers of the Law Reports.

[3] From J. D. Pulsifer, Esq., Reporter; to appear in 66 Maine Reports.

[4] From Hoyt Post, Esq., Reporter; cases decided at January Term 1877; the volume in which they will appear cannot yet be indicated.

ance of the duty she assumes reasonable skill and care, and to exercise them in everything relating to the work she undertakes until it is accomplished. The want of either in such cases is a gross fault, and the offender is liable to the extent of the full measure of the consequences: *Thompson* v. *Bliss et al. The Margaret*, S. C. U. S., Oct. Term 1876.

Agent.

Proprietor of Hotel—Manager—Authority to buy on Credit.—Where the owner and proprietor of a hotel employs an agent to run the same, and holds him out as manager thereof, a jury will be warranted in finding that such agent had authority to purchase the usual and necessary supplies for the hotel, and bind his employer to pay for the same: *Beecher* v. *Venn*, S. C. Mich.

Assault and Battery.

Assignment of Suit for Damages.—A claim for damages for assault and battery is not assignable: *Averill and Wife* v. *Longfellow*, 66 Me.

Attorney.

Lien of—Settlement by Parties.—An attorney, before judgment, has no lien to defeat a settlement made by the parties: *Averill* v. *Longfellow*, 66 Me.

Bankruptcy.

Settlement by Husband on Wife in Fraud of Creditors.—Where property was settled by a husband contemplating bankruptcy on his wife, and she sold it to a purchaser with notice of the fraud: *Held*, that the assignee of the bankrupt could follow the property into the hands of such purchaser, but that the separate estate of the wife was not liable: *Phipps et al.* v. *Sedgwick*, S. C. U. S., Oct. Term 1876.

Chose in Action. See *Assault and Battery.*

Common Carrier.

Liability for Loss of Package of unknown value—Limitation of Liability—Damages.—A common carrier is liable for the loss of a box or parcel, however valuable, though ignorant of its contents, unless he make a special acceptance: *Little et al.* v. *Boston & Maine Railroad*, 66 Me.

If the owner of goods to be carried is guilty of fraud in misrepresenting or concealing their value, he cannot hold the carrier liable: *Id.*

Common carriers may by contract or notice, brought home to the knowledge of the owner and assented to by him, restrict their common law liability against accidental loss or injury, but not against negligence: *Id.*

The carrier has a right to inquire as to the value of the articles received for carriage; and the owner will be bound by his answer: *Id.*

But, fraud out of the question, he is not bound to state their value when no inquiry is made: *Id.*

The delivery of goods to a carrier and their loss make out a *primâ facie* case for the owner: *Id.*

The measure of damages is the value of the goods lost, at their place of destination: *Id.*

Conflict of Laws.

Contract—Lex Loci—Usury.—The *lex loci contractus* determines the nature, validity and construction of contracts; the *lex fori* determines the remedies for their enforcement: *Lindsay* v. *Hill*, 66 Me.

In order to render a contract void for usury, it must be tainted with that offence in its inception: *Id.*

A foreign usury statute provided in substance that the reception of extra interest for the forbearance of payment of money after it became due, would make the contract itself for the loan of the money void. *Held*, 1. That such provision, not entering into the contract at the time it was made, and being in the nature of a forfeiture, was to be interpreted by our courts according to the *lex fori*, and not according to the *lex loci contractus*. 2. That in an action on the contract the defendant should not be allowed, by way of recoupment, for the extra interest paid, although such extra interest was by the foreign statute recoverable by action: *Id.*

Constitutional Law.

Power of Congress to regulate Commerce exclusive—State Legislation thereon void.—By the first section of the Act of the legislature of Louisiana, approved March 6th 1869, it was made the duty of the Master and Wardens of the Port of New Orleans, to offer their services to make a survey of the hatches of all sea-going vessels which should arrive at that port, and a penalty was prescribed for the neglect of this duty. The second section declared "that it shall be unlawful for any person other than the said master and wardens, or their legally constituted deputy, to make any survey of the hatches of sea-going vessels coming to said port of New Orleans, or to make any survey of damaged goods coming on board of such vessels, whether such survey be made on board or on shore, or to give certificates on orders for sale of such damaged goods at auction, or to do any other of the acts and things prescribed by law for said master and wardens to do and perform, and the person doing such illegal and forbidden acts, his instigators and encouragers shall be liable and bound to pay *in solido* to the said master and wardens one hundred dollars, with damages and costs, for each of said illegal and forbidden acts so done: *Held*, that the provisions of this act were regulations of both foreign and inter-state commerce, and that their enactment involved a power which belonged exclusively to Congress, and which a state could not, therefore, properly exercise: *Foster* v. *The Master and Wardens*, S. C. U. S., Oct. Term 1876.

Contract.

With United States—Damages for Breach.—The principles which govern inquiries as to the conduct of individuals in respect to their contracts, are equally applicable where the United States are a party: *The United States* v. *Smith*, S. C. U. S., Oct. Term 1876.

The United States can be required to make compensation to a contractor for damages which he has actually sustained by their default in the performance of their undertakings to him, but this is the extent of their liability in the Court of Claims. More than compensation for damages actually sustained can never be awarded against the United States: *Id.*

In Restraint of Trade—Injunction.—A covenant not to carry on, or be concerned in carrying on, either directly or indirectly, the business of a saddler, or sell any goods in any way connected with that trade within a distance of ten miles from C., under a penalty of 100*l.*, to be paid by way of liquidated damages for every such offence, is broken by selling goods as a journeyman in the employment of a person carrying on the particular trade in C.; and the breach will be restrained by injunction: *Jones* v. *Heavens*, (V.-C. B.) Law Rep. 4 Chan. Div.

Corporation.

Shareholder Estopped from Denying Existence of Corporation—National Bank.—Where a shareholder of a corporation is called upon to respond to a liability as such, and when a party has contracted with a corporation, and is sued upon the contract, neither is permitted to deny the existence or the legal validity of such corporation: *Casey* v. *Galli*, S. C. U. S., Oct. Term 1876.

A shareholder of a National Bank is liable if called on up to the par value of his shares: *Id.*

Damages. See *Common Carrier.*

Dower. See *Husband and Wife.*

Estoppel. See *Partnership.*

Former Recovery.

Contract—Damages.—S. had sold and delivered to D. several lots of staves, all at a price fixed by a contract, whereby S. was to deliver and D. to accept all the staves to be got out by S. in 1863. After all the staves had been delivered, S. sued D. upon the contract and the case went to judgment. During the trial S. failed, by reason of the absence or drunkenness of a witness, to prove an item of 2546 staves, and that item he withdrew from the jury. He afterward sued D. to recover for the item thus withdrawn: *Held*, that the item being within the former declaration, and being a part of the articles furnished under a single contract entirely executed, the case could not be distinguished from any other in which a party has failed for lack of proof; and the former judgment was a final determination of the damages to which S. was entitled under the contract: *Dutton* v. *Shaw*, S. C. Mich.

Fraud. See *Pleading.*

Government. See *Contract.*

Husband and Wife. See *Bankruptcy.*

Dower—Presumption—Lands conveyed by Husband without Wife joining.—It is a fair presumption that parties purchasing lands subject to dower, where the wife does not join in the conveyance, do not pay as much for the same as they would for a clear title, and that they voluntarily take the chances of her surviving her husband, and that therefore there is nothing unjust or inequitable in requiring them, in the event of the chances they have so taken turning out adversely to them, to pur-

chase from the widow her dower interest, or deliver the same up to her: *Westbrook* v. *Vanderburgh*, S. C. Mich.

INTEREST. See *Conflict of Laws.*

LANDLORD AND TENANT.

Growing Crops—Sale by Tenant.—The plaintiffs claimed through a public sale made in March 1873, by the tenant of defendant, of the growing crop. At the time of the sale there had been no breach or forfeiture of the lease. Afterwards, in April, upon the rent becoming due, the tenant abandoned the premises, and agreed to surrender possession to his landlord, the defendant, and the latter entered into possession, not because of a forfeiture, but under this agreement. When the crop ripened the plaintiffs, on going to harvest, were forbidden by defendant to do so, and the latter himself harvested and retained the crop: *Held*, that whatever might have been the plaintiffs' rights as purchasers in case the lease had before the sale been forfeited for non-payment of rent, the tenant, under the circumstances, had a clear right to sell this wheat in March before the rent became due, and he could not by any subsequent agreement with others, impair the title transferred at such sale to the plaintiffs: *Nye et al.* v. *Patterson*, S. C. Mich.

MASTER AND SERVANT. See *Municipal Corporation.*

MINE.

Right to Work—Consequential Damage—Water.—The right to work mines is a right of property; which, when duly exercised, begets no responsibility: *Wilson* v. *Waddell*, Law Rep. H. L. 2 Scotch App.

The owner of minerals has a right to take away the whole of them in his land, according to the natural course of user: *Id.*

Injuries by consequent waterflow, or where mineral workings have caused a subsidence of the surface, and a consequent flow of rainfall into an adjacent lower coal field, the injuries being entirely from gravitation and percolation, are not a valid ground for any claim of damages: *Id.*

Where there is an agreement between the owner and his tenant that, when the mines are worked out, the surface shall be restored, the owner may complain if it be not restored; but that gives no claim to any one else: *Id.*

MORTGAGE.

Future-acquired Property.—Courts of equity will, in certain cases, give effect to a mortgage of property to be acquired subsequently, where no rule of law is infringed and the rights of third persons are not prejudiced: *Beall* v. *White*, S. C. U. S., Oct. Term 1876.

MUNICIPAL CORPORATION.

Liability for Acts of Officers—Trespass in Executing Orders.—Though the doctrine of *respondeat superior* does not apply to render a town or city liable for the trespasses of a street commissioner upon adjoining lands when acting as a public officer merely, yet it does apply when he is not only a public officer but also acts under express authority of the city government while attempting to obey their directions. Thus, the city government of Calais passed an order "that the street commissioner

be directed to cause all fences now on the public streets to be removed" The street commissioner employed a surveyor to run a line between the plaintiff's land and the street. The line as run proved to be outside of the street limits and upon the plaintiff's land. The commissioner, believing the line to be correctly ascertained, moved back the plaintiff's fence in accordance therewith, removed from the land of the plaintiff earth and rocks, and built a sidewalk thereon. *Held*, that the principle of *respondeat superior* applied, and that the city was liable to the plaintiff in trespass for the damages: *Woodcock* v. *City of Calais*, 66 Me.

Liability of City—Incidental Injuries—Pouring Water from a Sewer on one's Land.—An action was brought to recover damages for an injury caused to the house of the plaintiff by the cutting of a sewer under the direction of the city authorities, and under city legislation, the validity of which was not disputed. *Held*, that the right of an individual to the occupation and enjoyment of his premises is exclusive, and that the public authorities have no more liberty to trespass upon it than has a private individual; and that pouring upon one's land a flood of water by a public sewer so constructed that the flooding must be a necessary result, is as much an actionable wrong as is the sending persons with picks and spades to cut a street through private lands, without first acquiring the right of way: *Ashley* v. *City of Port Huron*, S. C. Mich.

Subscription for stock in Railroad Corporation—Statute.—A statute of the state of Illinois after providing that a certain railroad corporation "shall cause books to be opened for subscriptions to the capital stock thereof," provided further that "it shall be lawful for all persons of lawful age, or for the agent of any corporate body, to subscribe any amount to the capital stock of said company." *Held*, that this language did not give power to a municipal organization to subscribe and to issue its bonds, but referred to private and money-making, trading or business corporations: *Township of East Oakland* v. *Skinner*, S. C. U. S., Oct. Term 1876.

If the Supreme Court of a state gives construction to the language of a statute, and there have been no conflicting decisions, this court, as a general rule, follows the construction thus given: *Id.*

A town cannot subscribe for stock in a railroad corporation unless it has the authority of the legislature for the act: *Id.*

Want of Authority to issue Bonds—Holder for Value.—A holder for value is not affected by any irregularities or frauds or unfounded assumption of authority on the part of the agents of the town or county: *County of Dallas* v. *MacKenzie*, S. C. U. S., Oct. Term 1876.

But good faith is unavailing where there is an entire want of authority in those who profess to act: *Id.*

NATIONAL BANK. *See Corporation.*

PARTNERSHIP.

Representations—Estoppel.—Dean sued the Bennetts as co-partners doing business under the name of the National Savings Bank, and he was allowed to recover against Alonzo and Allen Bennett, by holding

them estopped from showing as defence that they were not partners, by reason of their having silently allowed Theodore G. Bennett to represent them in printed notices to be partners as alleged. It was conceded they were not in fact such partners. These notices represented that Alonzo and Allen were directors of the bank, but did not import or imply the existence of partnership, or any connection by them involving the liabilities of such a relation. *Held*, that it was not competent for Dean to claim to have been led by these publications to suppose plaintiffs in error were partners, and as a consequence to have trusted the bank; that the most he could insist upon is that they should be held to the liabilities which the representations averred them to have assumed: *Bennett et al.* v. *Dean*, S. C. Mich.

Pleading.

Duplicity—Annulling Decree for Fraud on the Court.—A petitioner alleges that his wife obtained a jurisdiction in a cause of divorce against him by fraud practised upon the court, and that she procured a decree of divorce without actual notice to him or knowledge on his part, and "prays for a review of the same, that said decree of divorce may be annulled." *Held*, upon demurrer by the respondent, that the petition is not amendable to the objection of duplicity. The petitioner does not seek for a re-trial of the cause on the merits, but asks that the decree be annulled: *Lord* v. *Lord*, 66 Me.

But a decree *pro confesso* does not follow, because the demurrer is overruled. Clear evidence is required to show a fraud upon the court in obtaining jurisdiction, before a decree of divorce can be annulled: *Id.*

Pledge.

Remedy in Equity.—The doctrine that an equitable mortgagee by deposit of title deeds is entitled to foreclosure, does not extend to a pledge of personal chattels. A. deposited with B. certain Canada railway bonds as security for a debt; on bill filed by B. for foreclosure or sale: *Held*, that he was entitled to an order for sale only: *Carter* v. *Wake*, (M. R.) Law Rep. 4 Chan. Div.

Power.

Defective Appointment.—K. by his will gave a fund upon trust for such of the "children" of his daughter M. (who was then married), as she should by will appoint, and, in default of appointment, for her children equally. The will contained no hotchpot clause. M. had several children, some of whom were illegitimate, having been born before her marriage. By her will she appointed the fund to her "children, E. and C., their executors, administrators and assigns, for their own use and benefit." E. was one of the illegitimate, and C., one of the legitimate children: *Held*, reading M.'s testamentary appointment as indicating an intention to appoint the fund in moieties, that one moiety passed to C., under the appointment, and that the other moiety, E. not being an object of the power, was divisible among all the legitimate children, as in default of appointment. *Humphrey* v. *Tayleur*, Amb. 136; and *Alexander* v. *Alexander*, 2 Ves. Sen. 640, discussed: *In re Kerr's Trusts*, (M. R.) 4 Chan. Div.

SHIPPING.

Authority of Master—Bottomry.—A master cannot bottomry a ship without communication with his owner, if communication be practicable, and *a fortiori* cannot hypothecate the cargo without communicating with the owner of it, if communication with such owner of it be practicable. Such communication must state not merely the necessity for expenditure, but also the necessity for hypothecation: *Kleinworth, Cohen, & Co.* v. *Cassa Marittima of Genoa*, Law Rep. (P. C.) 2 App.

TOWN. See *Municipal Corporation.*

TRESPASS. See *Municipal Corporation.*

UNITED STATES. See *Contract.*

USURY. See *Conflict of Laws.*

VENDOR AND PURCHASER.

Vendor's Lien.—It was agreed between A. and a trustee for an intended company, that as soon as the company was formed and had adopted the agreement, A. should sell, and the company purchase A.'s interest in a leasehold brickfield, and that on an assignment to the company being executed, the company should pay him as the purchase-money, 8000*l.*, in manner thereinafter mentioned, namely, 6000*l.* in cash and 2000*l.* in in fully paid-up shares. The property was assigned to the company by a deed which stated the consideration to be 16,000*l.*, to be paid to A. as thereinafter mentioned, viz., fifty per cent. on all sums of money to be received from sale of shares, and fifty per cent. on all moneys borrowed by the company by way of capital until the 6000*l.* was paid. The company became abortive; no money was ever received by sale of shares, or borrowed, and ultimately the company was ordered to be wound up. *Held* (affirming the decision of Malins, V. C.,), that the nature of the contract was such as to exclude the vendor's lien, and that A. had no lien on the leasehold premises: *In re Brentwood Brick and Coal Company*, Law Rep. 4 Chan. Div.

WILL.

Children—Substitution of Issue of Deceased Child.—A testator made a general gift by will of his real and personal estate to trustees, upon trusts for sale and conversion, and to hold the proceeds in trust for all his children, who, being sons, should attain twenty-one, or being daughters, should attain that age or marry. The share of each of his sons to be for his own absolute use and benefit. And he directed that the share of each of his daughters should be held upon trusts in effect for herself for life for her separate use, and after her death for her children. The will contained provisions for substituting the issue of sons dying in the lifetime of the testator for the sons, but no similar provision for the case of daughters. A daughter having died in testator's lifetime leaving children who survive him; *Held*, that the gift of the daughter's share did not fail, and that her children were entitled. *Stewart* v. *Jones*, 3 De G. & J. 532, questioned: *In re Speakman. Unsworth* v. *Speakman*, Law Rep. 4 Chan. Div.